

A NEW
OF SOME
DEFICIENCIES
IN THE

Aids of TRADE;

With Essays towards the Means
for their Supply.

Most humbly presented to the Consideration
of our Legislature.

The principal Measures of being truly Popular,
and of causing the People Universally to rejoice in the
Publick Affairs, is to rectify what
is amiss, and to promote those Things which are for
the publick Good.

Occasional Courants,
N^o XVIII to XXX.

L O N D O N,

Printed for R. BURLEIGH in Amen-Corner.

MDCCLXX

(Price 6d.)

Where may be had the former Numbers.

OF 1803

THE NATIONAL ANTHROPOLOGICAL ARCHIVES

WASHINGTON, D.C.

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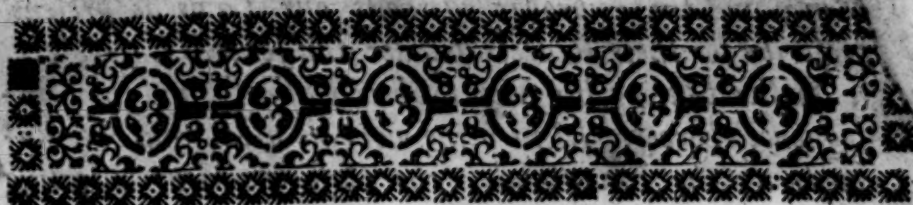
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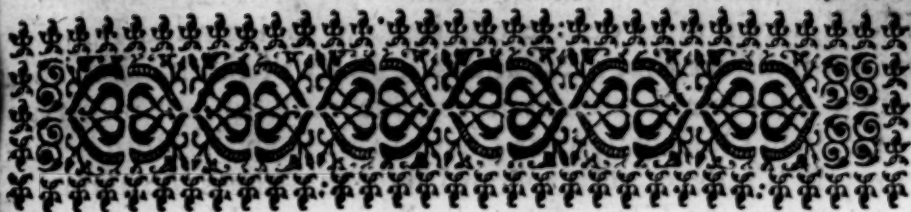
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52.

N^o.

E R R A T A.

Page 18. Line 13. read Expediency. P. 23. l. 15. for *arive*, read *arise*. P. 25. l. 33. for *which*, read *and*. P. 39. l. 8. for *the*, read *their*. P. 46. l. 26, 27. for *that should*, read *that they should*. P. 48. l. 27. for *but all*, read *but to all*. P. 50. l. 17. for *his*, read *a*. P. 54. l. 36. for *with*, read *with the*. P. 55. l. 1. for *to the*, read *of the*. P. 56. l. 6. for *Beginnings raised*, read *Beginnings have raised*. l. 16. for *Pretences*, read *Pretence*.



[N° XVIII.]

T H E

Occasional Courant.



INCE a true Zeal for the Service for my Country hath induced me to become an Author, I shall next turn my Thoughts to the Consideration of the Interest of Trade; and first consider of some Deficiencies in the Aids therefore, which I conceive might be supply'd; and thereby some Occurrences therein better regulated, by a more certain concise and easie Method to determine such Affairs and Differences, as do and will necessarily happen amongst Traders; as likewise more to ascertain every Persons Duty, and better to determine the Adventure each is to run, that is concern'd either in the Stock, or the negotiating any Affairs in Trade. And by such other Encouragements and Conveniencies in Trade, as may still add to the great Increase of the Wealth and Strength of this Island, and the Territories thereto belonging, which hath chiefly by Trade been brought to make so considerable a Figure in the World, as at present it doth.

And because in Essays of this Nature, tho the Author may point out to his Fellow Subjects of his own Rank, the Inconveniencies they lie under; yet that being of little use unless Redress'd, it is therefore to that the most material Part of my Intentions, absolutely necessary to apply to our Legislature, to take these Matters into their mature Consideration.

I do therefore, with all Humility, premise, that what I shall hereinafter debate on, is no ways intended Dogmatically to direct that great and wise Body of the Nation, collected in their Representatives, but only to put in a true State, such Observations as I have made from the Representations of Traders, with whom I have sometimes occasionally conversed. And if thereby I shall give any Light to those, whose more weighty Affairs gives them not so much Leisure, to consider all these Matters, and thereby any one Improvement or better Accommodation of Trade, to the advantage of the Publick Good shall take Effect, I shall esteem my Endeavours well apply'd. However I humbly hope, that those good Intentions which were the first moving Cause to the letting any of my Conceptions appear in Print, will be accepted as an Excuse, at least to my making that attempt, which may be thought would come more properly, from a Committee selected from amongst the most considerable Traders of our Metropolis.

One Thing I think I may offer in my own Favour for this Undertaking, which would not be so applicable to such a Committee; That is, that every one in such a Body, would be strongly inclined to favour that Commerce, which he is himself concern'd in; and considering how different Interests in Trades, do and will interfere with each other, those different Interests must be supposed to bias those whose Concern in them makes it their own private Interest, particularly to promote them, tho to the prejudice of other Trades that interfere with them.

And this, I fear, hath been one Cause, that the Interest of Trade in General, hath been too often laid before our Legislature, under such different Representations, that hath render'd some part of those Measures, which otherwise might have been taken, so doubtful and intricate, as hath thereby defeated any procecdure on the Whole; which may be one Reason that we still want such Laws, which are more indisputably Material to Trade in General, than peculiarly adapted to such Encouragement of one Trade, which might thwart the promoting of another.

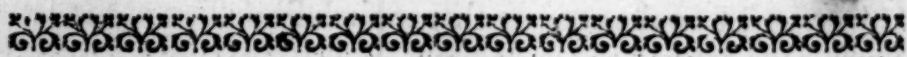
Now I being unconcern'd in the Interest of these Negotiations, can't be suppos'd to be any ways byas'd thereby, notwithstanding which upon the Consideration I have before hinted, that the Interest of one Trades thwarting that of another,

ther, and their being both equally asserted to be to the general Interest of the Nation, upon the Consideration that Traders thus thwarting each other, may have hitherto been one Means to deter the necessary Considerations for the general Interest of Trade. Tho' I am concern'd in no Trade, yet I shall in the General, endeavour to avoid any Topicks, that may from Interest induce any to thwart my Propositions : And tho' in the prosecution of this Subject, in all its Parts, such will sometimes be the necessary Result of aiming at a general Good, upon general and well approv'd Maxims ; as in some Cases to thwart a particular Good, to particular Persons, and which I am apprehensive cannot be avoided when I come to treat of the Improvement of Trade ; yet I shall in this Treatise handle only such Topicks as can interfere with no other fair Traders Interest ; but as it is next to impossible, to propose a Conveniency or Profit to any, without some Inconveniency or Loss to others, so I foresee that bringing disputable Matters amongst Traders to a greater certainty ; tho it would be a very great Advantage to Traders, yet it might be some disadvantage to the honourable Profession of the Law : but as this would not probably be so very material a Damage to that Profession, as may be apprehended, many of those Differences being compromised or refer'd, purely to avoid the great Charge as well as the tedious and uncertain Issue of the Law ; so I hope that the endeavouring to ease Traders of the perplexity of Law Suits ; or at least bringing them to a more speedy and certain Issue, and at less Expence, will be esteemed no more injurious to the Publick Good, then it would be to direct a general and infallible Method for the preservation of Health, tho' thereby the Physicians would be defeated of some of their Patients.

At least I doubt not but that to such Professors of the Law, who have arrived to the Honour of being Representatives in Parliament, the Consideration of so Important a Benefit, as the good of Trade is to the Publick, will far out weigh the uncertain Prospect of an accidental Diminution, that may thereby happen to some Parts of their Profession. I shall therefore esteem this Objection as not of sufficient weight to discourage my Hopes, that attempting an Essay for the advantage of Trade, may not be altogether ineffectual ; and wherein I shall not run into the nice Theories of Trade, as

consider'd in its political Capacity, with respect to Treaties of Commerce with neighbouring Nations (that having been perform'd by abler Pens) but set out some plain Matters which occur daily in the Practice thereof; and in which if there were more suitable Laws to the Circumstances of Trade, it would be a great Conveniency and Encouragement thereto; for our common Law Cases arising chiefly from Negotiations transacted on Shore, may not come fully up to suit all Circumstances, when they are apply'd to Maritime Cases: And tho the Lawyers by their great Skill in setting Things in a proper Light, for the Interest of their Clyants, may be able to make a parallel Case on Shore, that may suit to the Apprehensions of a Jury, wherein it is a very rare thing to have one impannel'd that is acquainted with the Maritime Affairs, that Employment generally excusing them from that Service; and therefore tho such Case may seem very applicable to the Case depending, yet probably there may be Circumstances, to the understanding of which, both Council and Jury are perfect Strangers; Which were they rightly apprehended, might give a quite different turn to their Conceptions of the Merit of the Cause.

Therefore more full, ample and particular Laws for Trade and Sea Affairs, cannot but be very proper to a Nation, a material Part of whose Interest is universally agreed to depend on the increase and success of Trade, and Foreign Commerce: And in this we have the Example of our Neighbouring Nations, they having their proper Courts and Laws for the decision of Controversies of this Nature; where, by a more summary Way, such Matters are determined with greater certainty and less trouble to those concern'd therein, and consequently to the Advantage of Trade in General.



[N° XIX.]

The Occasional Courant.

I Having in my last Paper premised what I apprehended necessary: I shall now enter on the Work proposed; and first endeavour to give some Account of the great Uncertainties

ties to which Traders are expos'd in many Cases that frequently accrue in Trade.

And the increase of Shipping and Navigation being justly esteem'd the chief Defence as well as the necessary Means of advancing the Wealth, and adding much to the Convenience of Life in these Nations ; the Consideration of that claims the first Place.

Therefore I shall put the Case that may possibly happen to those who shall think fit by investing some part of their Estate in Shipping, to the Encouragement of this so beneficial an Interest to the Nation, and submit it to the Judgment of the Learned in the Profession of the Law, whether as our Laws now stand, they may not be subjected to have a much greater part of their Estates brought into Question, then they intended to expose to that Adventure.

To set this Matter in a clear Light, we will suppose a Case that may happen, wherein as far as I have had Opportunity to know the Opinions of great Lawyers, they are at least doubtful or vary in their Judgments ; and consequently the Issue of such a Cause must at least be doubtful, supposing it to be, viz.

A Merchant takes One-Sixteenth of a Ship about Three Hundred Tunns, which Costs him about Two or Three hundred Pounds ; and he probably may conceive that Sum to be the Extent of his Adventure in that Affair : This Ship Loads here for Turkey or India, and may probably take in Goods to the Value of Fifty Thousand Pounds, or upwards ; and by some Accident, or it may be by the Carelessness of a Drunken Sailor, the Ship takes Fire in the River, and is consumed with her whole Cargoe.— Now, for what I could ever yet be informed, it is not absolutely determined whether the Owners of such Ship, are, or are not lyable to pay for the whole Cargoe, and should the Owners of such Cargoe obtain Judgement against the Owners of the Ship, whether they might not take their Execution for the Whole, against any one of the Owners of the Ship.

Now what a Terror would this Prospect be if it were consider'd, to affrighten Men of good competent Fortunes from becoming Owners of Ships ; therefore certainly if there is but a doubt of this Case with the Learned in the Law, it would be a much greater Encouragement to Navigation, if that doubt was taken away. And that any Person when he came to be Owner in a Ship or Vessel, was intirely satisfy'd

that what was the cost of the part he holds, should be the extent of the Adventure he is to run thereby; for there may be other Cases of Loss or Damage, which may vastly exceed the Value of the Ship, and which may possible be so circumstanced, that a Jury may not think them included in those Words (*the Danger of the Seas excepted*) and how far the Owners of Ships may be lyable to all Accidents, from which they are not saved by that exception of the Bill of Lading, seems as doubtful as in the Case of Fire.

To this there lies some Objections, viz.

1st, That it is requisite that the utmost Penalty should be incur'd, to procure the utmost Care to prevent such fatal Accidents, which must inevitably be very ruinous to those they fall on.

To this I answer, That if Penalties are always extended to their utmost, they may often times be as injurious as the Evil they are intended to prevent. For in this Case, who is to take this Care? Can the Owner of the Ship who is not on board do it? Or can any thing induce him to take more Care to employ one that he believes to be a prudent and careful Man for a Master, then the ventring part of his Estate under his Conduct? Or, can any thing be an additional Inducement to the Master to be more careful, than the hazard of his Life, if he is on board, and the Loss in all probability of the Bulk of his Substance; at least of his present Employment, and promoting a great Objection to his getting into another, especially if any Imputation can be made, that the Misfortune happen'd through his want of due Care?

Or, can it be suppos'd, that the Sailor should take into his Consideration, the Danger of ruining the Owner of the Ship, and should thereby be induc'd to be much more careful, than the Consideration of the hazard of his own Life, at least of his Wages, Cloaths, and Adventure would make him? Or would it not be much more probable, that the fear of some corporal Punishment, which upon Conviction of his want of due Care in such a Case he might be made lyable to, would be a much stronger Motive to his greater Caution and Circumspection, for the preventing such Accidents, than the prospect of the ruining the Owner of the Ship can be? Therefore there being (without putting the Owners of Ships under such a dubious Case, whether they shall be ruined or not) sufficient Methods to procure all the Inducements to
Care

Care that may be, or at least such as will intirely swallow up that Inducement, with all whose Care is requisite in this Matter; there is no Reason from this Objection, that the promoting the Increase of Shipping should lie under so great a Discouragement, as any doubt of the Issue of a Cause in the Case supposed must necessarily lay it, with all who have Fortunes to loose, and take the Case into their Consideration.

Another Objection may be, that the Owner of the Goods may have made Insurance, and therefore the Loss may not fall on the Owner of the Ship.

But he may not have made such Insurance: But suppose he hath; in answer to this, I must refer my self to the Learned in the Law, whether if such Insurer pays his Loss, the insur'd is not oblig'd to assign to him his Claim, and allow him in his Name to sue for it? If so, it is but very small Satisfaction to the Owner of the Ship, nor will it much concern him for whose Account he is made lyable to stand to such an uncertain Issue.

And as this uncertainty must necessarily prevent some Persons from becoming Owners of Ships, so it must in its Consequence be injurious to Freighters, for what lessens the Number of Ships, must necessarily augment the Freight; and the uncertain Issue of a Law Suit, in Case of an Accident, is not an Equivolent to the certain Charge of paying more Freight, especially since that Issue is so very uncertain, that I believe few or none have recover'd upon it, tho great Sums of Money have been expended in the Attempt; which being still undetermined, hath ended only in promoting a Resolution in some Merchants, never to invest any part of their Estate in Shipping, till the Case above is put out of Dispute, that they may know the extent of their Adventure thereby.

Therefore it is humbly propos'd, that this Case deserves the Consideration of our Legislature, whether its being ascertain'd would not be of some Service to the Increase of Shipping, and the Interest of Navigation.

[N^o XX.]

The Occasional Courant.

IN my last I consider'd a Case, the uncertainty whereof, may be some Discouragement to the Increase of Shipping: I will now propose some Inconveniencies that do accrue in the Navigating the Ships we have, which were they remedied, would doubtless be a help in the Negotiations of Trade.

Now, as to the differences that may arise between a Master of a Ship and his Men, during the Voyage; the adjusting them by the usual Proceedings at common Law, are Remedies that Masters and Sailors generally think worse than the bearing the Malady, and it often proves so to them. Such Cases are various, and it may not be necessary or scarce possible to state all that may happen: I shall therefore only mention some of the most usual, and submit it whether there may not be a more proper Method found to adjust them, then what our common Law at present prescribes.

Suppose a Master, to excite a refractory or lazy Sailor, to exert himself on some of those urgent Necessities, which often happen at Sea, or for other good Reasons of his Misbehaviour or Neglect, useth the pressing Argument of a Cane or Ropes-end to him; and when they come Home, by the help of a *Wapping* Solicitor, and the Evidence of some of his disgusted fellow Sailors, an Action of Assault and Battery is brought against the Master; in such Case I have known little or no difference made in the Issue of the Law, then if the Cause had been between two Neighbours, whose Passion had induc'd one of them to break the Peace, by cudgelling the other: And tho little or no Satisfaction accrues to the Sailor hereby, yet by the management of such Solicitors as generally excite them in bringing those Actions, they many times prove very chargeable and troublesome to Masters of Ships.

And

And if we put the Case on the other side, and suppose the Master useth his Men with undue Severity, and defrauds them of what is their just Right to have, as to Victuals or otherwise ; what Remedy have the Sailors but by every individual one of them bringing different Actions, viz. For Assault and Battery on his Beating, and of the Case for not performing his Contract, as to allowing them what was fitting, &c. Now considering the implicit Faith these poor Wretches are oblig'd to put in their Solicitors, and what sort of Solicitors they generally fall in with by the help of their Landladies, is not such a Remedy worse to them then none ; and if some of them are so very sturdy as to seek Revenge on their Commanders, for this ill Usage, tho the Issue may give such Commanders some Charge and Trouble, it hardly ever proves any other Satisfaction to the injur'd Sailor, but that at an Expence he can very ill afford ; he hath put his Commander to some Expence and Trouble likewise.

These two Cases, it may be with some variety of Circumstances, are the main Supports of a Sett of Fellows, that call themselves Solicitors, who under pretence of putting Sailors in a way of having Justice done them, cozen the poor Fellows out of what they have hardly earn'd, by the hazard of their Lives : And when by the help of well Instructed Evidence, and the want of Experience of the Case in the Jury and Council, &c. they have got a Verdict, to the considerable Cost of the Commander ; the Clyants are generally told by their Solicitors, that the Charge of the Law has swallowed up All ; and with a few hard Words, making them believe, that they are in their Debts, affrighten the poor Fellows to Sea again ; where being got, they think themselves at Liberty amongst their Mates, to curse the Lawyers, and forswear ever having more to do with Law, let the Case be what it will ; the only Satisfaction they have, being to value themselves to their Fellows, how they stood up for the Rights of the Fraternity, and how hardly the Law used them therein, to their future Discouragement, ever to seek for Justice, let the Hardships of the Case be what they will : And hereby those Abuses and ill Usages may not only be supported, but the difficulty of obtaining any Right by our Laws, may be put under strange Views to the Sailors, which may be one Inducement to them, too frequently to put themselves into Foreign Service, when they are wanted
at

at Home, to the prejudice not only of Trade, but the Defence of the Nation on any extraordinary and sudden Emergency.

Another Case there is which too frequently happens, especially in our *American Voyages*, and is of much greater Concern to Owners of Ships directly, and in its Consequence may be injurious to the Nation in the Publick Defence thereof; and that is, Sailors frequently deserting the Service of such Merchant-Men, as they here Imbarque on for the Voyage, out and home. Now I must acknowledge my self ignorant what effectual Remedy our Law doth at present prescribe to this so very injurious a Practice to Trade, the Forfeiture of the Wages due being generally but for little Time, is next to no Compensation; and there may be some doubt, whether the Law justifies the detaining of it; and whether if sued for in the absence of the Man by a Power of Attorney, or after his Death by an Executor, it may not be recovered; therefore as that is insufficient in any Proportion, to answer the Damage which may be sustained by his Desertion, so the detaining of it is at least doubtful in the Issue. Herein therefore is no remedy, neither have I heard of any the Law prescribes; unless if you meet with such a Saylor here, he might be liable to an Action of the Case, for not performing his Contract; but this is attended with so many Difficulties, as first, to prove such Contract, to which Masters of Ships may not always have a view in Shipping their Men, and may be therefore deficient in such Proof, or not proper Judges of what Proof the Law requires in such Case, and as our common Law now stands, the Evidence not being to be preserved in Writing, but being required *Viva Voce*, and those who are Evidence in this or such like Cases, being generally Sea-faring Men, puts them who have such Tryals under very great Difficulties, either to keep their Evidence on Shore, at a Charge which the Cause will hardly bear, or else run the hazard of loosing their Verdict, by wanting their Evidence when the Cause comes on; this is one very great Inconveniency which attends Maritime Causes, in our Common Law Courts, but if all these Circumstances are got over, it may be pretty difficult in the Case we are debating, to ascertain the Damage, to the Satisfaction of a Jury that have little or no Apprehension of the Affair: And after all this, if the aforesaid Incidents should happen so right as to get a Verdict, what Satisfaction

tistaction can from thence be expected for the great Loss of having a Ship detained a Month or two, and possibly being defeated of the proper Seasons in her ensuing Voyage; and consequently of the Success of her whole Years Trade? Nay, what Encouragement can any Owner of Ships have by these Means, to seek for any Relief, when the utmost Result of all their Application in this Way, is at the Expence of much Charge and Trouble, to distress a poor Wretch, who probably can no ways raise Money or Friends, to stand such a Tryal, but more probably will never come within the reach of our Courts, to give such Opportunity? And therefore the Consequence of our Law as it now stands in such Cases, is not so likely to prevent such Desertion, as when it is once ventur'd on to induce such Sailors never to return Home. Having endeavoured to set the Cases that may and frequently do happen between Masters of Ships and their Sailors in a true Light, and the Means to help them by our Laws as they now stand: With Relation to such Cases, the main Work is to find out more proper Remedies, which if not done, I must acknowledge that these Cases had better lain in as much obscurity as may be, that if possible they being known only to those who have the Misfortune to feel them, might be of less Discouragement to others, till it happens to their turn, by a too dear bought Experience to be apprized of them: And was I of the Opinion that these are remediless Cases, I would by no Means have mention'd them in so publick a Manner, but apprehending that our Legislature, in their great Wisdom, may find out as effectual Means to answer these Cases as any of our Neighbouring Nations have done: It is to that intent that I endeavour to set them in this true Light, and in order to lay some Foundation for wiser Heads, that probably have but little leisure for these Affairs. I shall offer at an Essay to render some Expedient in these Cases Practicable: And if herein I give any Hints to the more Able and Experienc'd to find out some effectual Remedies for these Inconveniencies, I shall apprehend my Labour well bestow'd.

The Occasional Courant.

IN my last I stated some Cases, which do frequently arise between Commanders of Merchant Ships and their Men, and endeavour'd to set forth how short our Laws are, in applying proper Remedies thereto: And tho these Cases may seem Trifles to some, yet they are doubtless in their Consequence of Importance to our Navigation. If therefore in making an Essay towards introducing better Management of these Affairs for the future, I shall fall short of providing for all Exigencies that may arise in the Practice; Experience may furnish Methods to make such Additions or Alterations therein as may be found requisite: And the Opinions of those may be taken, who by their long Knowledge of these Affairs, and the Usages of the other Countries herein, are better qualify'd to mend such Schemes, as I shall lay down, then for want of such Experience I may be to make them: If therefore by making the Attempt, I bring such in to give their Assistance, and the Success of the Whole proves to the advantage of my Country, I have my Aim. I shall therefore not be discouraged, by being justly Conscious of my own Incapacity, or apprehensive of others better Abilities herein, but proceed to set down what Methods accrue to my Apprehensions, and how they may be made Practicable, to the bringing these Affairs under a better Regulation for the future.

Now to consider these Cases, and first as to a Commander of a Ship using Corporal Punishment to his Men, on some Occasions; this hath been found so absolutely necessary to their Affairs, that it is the general Practice, and Usage hath generally excused it, tho often, as I have before mentioned, it is otherwise, and such Usage may sometimes excuse it, when it is guided neither by Justice, Prudence nor Humanity; therefore what is requisite in some Cases, and the Justice and Expedien. y thereof depends on the Occasion, and the suiting the degrees of such Punishment, to such Occasions, still to be bounded and softned by the necessary admittance of the
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Consideration of Humanity. How can all these Circumstances be so properly weighed, as by a Court impower'd in a summary manner to take them all into their Consideration, and regulate their Judgment according to the respective weight of each Circumstance? And to such Court may be referr'd all sorts of Disputes between Masters of Ships and their Men, and sundry other Maritime Affairs, with proper Powers to make such Satisfaction to the injur'd Party, as shall be agreeable to Justice. And the Laws to be made in such behalf; reserving still such proper Powers of Appeal, to the Courts of Law or Equity, as those Courts should think fit to allow.

The Practice of such a Court, would not be altogether unprecedented, for in a Case that bears some Resemblance to it, it is now and hath been the immemorial and very necessary Practice of the City of *London*, for the Chamberlain in summary Manner to hear and determine all Differences that do arise between the Citizens and their Apprentices.

But this Power may be justly thought of too great Consequence to be intrusted in one Hand, it may therefore for the Port of *London* be lodged in one common Lawyer, one Civilian, one discreet Merchant, and two well experienc'd and prudent Commanders of Ships; and for other Principal Ports, in Proportion; and for smaller Ports they may be under the Courts of such principal Ports as they are most adjacent to, and under the Districts of which they fall; such Methods no doubt of it would be of very great Service to Navigation, and any Inconveniency that might arise in the Practice of such Courts, might be soon obviated and redress'd by our Legislature.

As to the Case of deserting the Service of the Ship during the Voyage, and contrary to the Agreement, that I must own will not always be in the Power of these Courts to redress, for that therefore I will try at some farther Expedient, and considering that these Desertions are most usual as well as most injurious in our own Plantations, the Means of redressing them seems to be more attainable.

Suppose then that such Courts are set up in the several Ports of our Plantations, and that Masters of Ships on their Arrival, give in a List to these Courts of the several Men ship'd for the Voyage out and home, with their Descriptions; and upon any Desertion give notice to such Courts thereof,

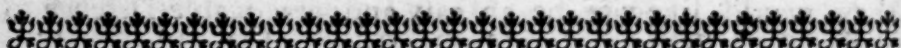
and by which publick Notice may be given for the discovery of such Deserter, with a Penalty to be inflicted on such Commanders or Others, as shall conceal, entertain, or harbour such Man; and the Master to whom he belongs shall have power from the said Court to search for him: and that any Sailor that shall absent himself from the Service of the Ship, and remain on Shore, without Leave from his Commander, should be lyable to be taken up and punished by this Court. But if after all this, such Sailor should not be found, during the Masters stay there, he may leave a Power to any Friend, that upon his being found, he shall be brought before such Court, and stand to such Infliction as the Law in such Case shall direct; and those who shall appear to have been inducing, aiding or abetting to such his Desertion, shall abide such Penalties as the Law shall in such Case award, to be recover'd for Account of the Master from whom he deserted; and that Sailor should be prohibited serving such Person, who had been any ways Instrumental in such his Desertion. These Measures might probably put a stop to those very frequent and very injurious Desertions, that are practiced particularly in the Ports of *North America*; and if Methods to this purpose were once set on foot, those Deficiencies that would soon appear by the Practice, might be remedied to make them more Effectual: and if such Deserter should escape in *America*, notwithstanding the aforementioned Cautions, when ever he should be met with here, the Courts for that Purpose might have power to inflict such reasonable Punishments that would deter others from committing the like Practice; and a Prosecution in these Courts would not be so great a Trouble as to prevent Owners from undertaking it. Some Desertions after all these Cautions might possibly still be practiced, but it may be hop'd that these Measures with what Improvement might be made on them, would prevent their being so frequent and common as they are now, and by which Traders are many times expos'd to very great Prejudice; of which I shall give an Instance or two which often happens, viz.

The common and most frequent Voyages, from those Parts of *North America*, where these Desertions are most frequently complain'd of, are either to the Southward Parts of *Europe*, with Fish, &c. or to our *West-India Plantations*, with Provisions, Boards, Staves, &c. Now in either of these Voyages

a Months delay which is too often occasioned by the Desertion of the Men, is very injurious; for in the former it may loose the Market for the Fish, and in a great Measure defeat the getting a Freight to *England*, with the Wines and Fruits of those Countries; In the latter it may not only loose the Market, and damage the Provisions, but render the Ship too late for the Crop of Sugars; so that by this delay, occasion'd by such Desertion of the Men, the Measures which were rationally laid for the whole Years Trade, may be much broken and defeated, besides that inevitable Damage of keeping the Ship so much longer on Charge in her Voyage.

And if it be objected that putting Sailors under more severe Discipline may be a Motive to them to take Service in Foreign Countries, I am of the Opinion that the Methods hereby proposed would in the Issue be found to have the direct contrary Effect; for as these Methods are proposed to keep Sailors to their Duty in the Service they undertake, so they would likewise be an easy and practicable Defence to them, from the unreasonable Cruelties and Hardships which by those constant Pests of Humane Society in every part thereof, the Pride, ill Nature and exorbitant Covetousness of some Commanders, they are expos'd to; and by restraining the vile Usage of such Commanders would probably lay the generality of that sort of them, under Obligations of making their Mens Lives more easy and comfortable to them: And whilst Men live in any tolerable good Condition with their own Country-men, they are not generally tempted to run the hazard of making their Circumstances worse, by seeking Service with Foreigners. And good and punctual Discipline brings Men to be careful, and think of taking Measures of good Husbandry, and if thereby they save something so as to maintain Families with any Comfort, it will prevent the Thoughts of quitting their own Country, and running the hazard of living worse amongst Foreigners; for the foolish Extravagance and irregular Transactions of many of our Sailors, putting them under Inconveniencies at home, is one chief Inducement of their seeking Service abroad, to secure themselves from the Fears of Punishments for such Crimes, which their being used to good Discipline might have prevented their committing; for nothing brings Men to Consideration more than good Discipline, mix'd with good Usage, by the due Application of which our Sailors may be reduc'd,
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from what too many of them now seem to be, but unthinking Stroolers and Vagrants, to be very useful Members of the Nation, to the better promoting of the Publick Good, and supporting Families which may be constant Nurseries to supply the Nation with such useful People; and the admitting and encouraging them to take some Adventure for themselves, would be one Means of promoting most of these good Purposes. And for the farther Encouragement thereof, and promoting the Means which may tend thereto, the Observations which would accrue in the Practices of such Courts, may to good Effect be laid from time to time before our Legislature, for the promoting such farther Means as to them shall seem requisite, towards the attaining these Ends, which are so justly and universally agreed to be of great Consequence to the Strength, Wealth and Conveniency of these Nations.



[N° XXII.]

The Occasional Courant.

I Have in my former Papers consider'd the Cases of Owners and Masters of Ships, and their Men, as they relate to the Uncertainties and Inconveniencies to which they are now expos'd.

I shall now make some Remarks of the Uncertainties which Masters of Ships in Relation to their intercourse with Merchants, consider'd as Freighters at present lie under, and submit it whether if there were a fixed Rule in these Affairs, and the Duty and Burthen of each Person that is concern'd in such Negotiations were better ascertain'd, whether it might not be to the ease of both Merchants and Masters, and others concern'd in such Affairs, and in its Consequence to the Encouragement of Trade.

To this it is first requisite to state these Cases as they now stand: By all the Observations that I could make of the Opinion of Merchants and Masters of Ships, by the Conversation I have had with them, they seem very various, and uncertain as to the Manner and Time that a Master of a Ship

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Ship is charged with the Custody of the Goods ship'd; and yet much more so, as to his being discharged of those deliver'd from his Ship, as to the Place, Time and Manner of such his Discharge.

Other Ports of *Europe* have their determined Rules in this Affair, and I have found Masters of Ships govern their Sentiments in these Matters, pursuant to the Manner and Usage of those Ports to which they have chiefly been used to Trade, and therefore vary very much in their Opinions of the Usage of our owns Ports; and when they have been call'd as Evidence to prove the Usage or Custom of the Port of *London*, they have been as various in their Opinions thereof, as the Customs of the different Ports which they have respectively used may vary from each other; yet the Verdict on Controversies that arise from these Affairs, or the Issue which depends on the Juries Apprehension of them, may in many Cases depend on such Evidence, and consequently be as various as the Conceptions which from the different Usage of sundry Ports, are formed in the Ideas of such as are called to give their Evidence to the Proof of the Usage of our Ports: To set this in a clear Light, I shall exemplify it in some Instances.

The Usage of the Ports of *Spain*, particularly *Cadiz*, hath been esteemed that the Care and Charge the Master hath of Goods to be received into and deliver'd out of his Ship, extends no farther then within the reach of his Ships Tackle; and this Usage I take to be first founded on a very valuable Priviledge the *English* had in that Port, viz. That whatever Goods were within the reach of the Tackle of an *English* Ship, were not lyable to be visited by the *Custom-House* Officers; so that tho such Officers were in pursuite of a Boat of Goods, on suspicion of their not having paid the Custom, if such pursued Boat could get on board the *English* Ship, and the Master of such Ship should heave his Ships Tackle into the Boat, the Goods being thereby deem'd 'in his Custody, they were protected from the Inspection of the *Custom-House* Officers, who thereupon quitted their Chase; but if the *Custom-House* Officers could come up with the Boat before she got within the reach of such Ships Tackle, they were deem'd not in the Custody of such Master, and were lyable to the Visitation of such *Custom-House* Officers, and the subsequent Confiscation of what had not paid the Duty. On this Priviledge I take

to be founded, that Maxim which is universally accepted as the Custom of the Bay of *Cadiz*, that the Extent of the Ships Tackle is the Extent of the Masters Custody, and Charge of such Goods.

But in other Ports of *Europe*, and particularly in several of the Ports of the *East*, it is the Custom for Masters of Ships to receive and deliver their Goods on Shore, and there for the Master and Merchant to agree; the Weights and Contents to be inserted in the Bill of Lading, of Goods receiv'd, and to be compar'd and agreed to comply with the Bill of Lading, sign'd for Goods deliver'd.

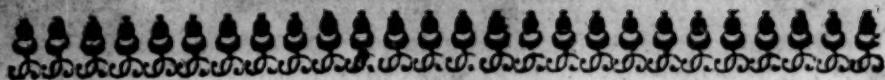
Now these different Customs of different Ports, as occasion serves are applyed, to make out and support the Customs of the Ports of *Great Britam*, which for all that I could ever yet perceive, hath no fixed and stated Usage in these Affairs: Indeed when old Commanders are called to give their Judgement in Disputes, the Issue of which depends much on the Usages in such Cases, they frequently talk of the Laws of *Allaroon*, as to be the guide in these Matters; but I have found their Apprehensions of those Laws as various as their Opinions in such Matters, and all the Knowledge they had of those Laws of *Allaroon*, which they so much talk of, to be founded in uncertain Tradition they had taken up, and Discourse they had heard thereon.

And I can't conceive why we should have Reference to the Laws of *Allaroon*, which are so little known, or at least so variously understood; I can't but apprehend that if it was gone about, we might draw up Rules and Laws in these Cases, as well as it was done at *Allaroon* I know not how long ago, and such that as they might much better suit our Affairs, and be of real Authority with us, so they might be a much plainer Direction to all Persons concern'd, and make the Issue of all Disputes relating to these Matters more evident and certain, and thereby each Party knowing the Duty the Law in such Case lays on him, might apply to the discharge of it, whilst now oftentimes Neglects may happen, to the prejudice of Traders, because it is not fully determin'd and known, whose Business it is to take the necessary Care to prevent them: And whilst the Misfortunes which may happen by Accidents, or Neglects, are endeavouring to be laid to the Charge of the one, or the other, these Misfortunes may be considerable augmented by such Disputes,
and

and possibly the Disputes themselves, and the necessary Charge and Consequence that attends them, may sometimes make up the greatest part of the Misfortune. Therefore to have these Matters taken into Consideration, and to have more certain and stated Methods, by proper Laws and Rules to regulate and settle the Cases that may arise herein, would no doubt be of Advantage to Trade; and herein the Rules of charging a Ship with the Damages of Goods deliver'd may be brought to greater Certainty, in determining whether it was occasioned by the Master's Neglect of due Care as to his Ship or the Stowage thereof, and ought to be made good by him out of the Freight; or whether it arose by the unavoidable Dangers of the Seas, or bad Weather, and ought to be esteem'd as the Merchants Adventure.

These things may be doubtless brought to a much greater Certainty, at least to a much shorter and easier Method of bringing such Disputes to an Issue; at less Expence of Money and Time, and consequently with less Prejudice to the Affairs of Commerce in General.

And the determining the Issue of those Accidents which frequently happen in Harbours and Rivers, by Ships and Vessels falling Foul of each other, or running on other Ships Anchors, and other Misfortunes of such sort; which if there was a stated and known Rule, and which would in a way evident to all affix the Measures that Masters and Pilots are to observe in such Cases, and the Consequence of deviating from them, not only many of these Accidents might be prevented, by the following such Rules, which when once laid down, it would be the Business of all concern'd to apprise themselves fully of: but if such Accidents should, as sometimes they will, unavoidably happen, there might by an easier, more certain and speedy Way to adjust the Damages thereby received, which a very great part of the ill Consequence of such Accidents be avoided, which the perplexing Litigations that are sometimes carried on, by an obstinate Humour, makes more Vexatious and Damaging then the Accidents themselves really were: Many of these Circumstances frequently perplex Traders, and divert their Thoughts from the necessary Attention which the propogating Commerce requires, therefore if they were obviated by proper Laws, it must in its Consequence be a farther Encouragement to Trade.

[N^o XXIII.]

The Occasional Courant.

ANother great Inconveniency and Prejudice to Trade, is a sort of gaming in Trade, which is follow'd by some, and wherein there is but too much reason to believe, that those who most use it do often practice very foul Play. By this I intend that Usage of making Insurance on Ships where the insured hath no Adventure, or in no Proportion to the Sum he so insures: Now, tho' this seems at first View to be as all other Gaming is, neither to the Profit nor Loss of the Nation, consider'd abstractedly from its other ill Consequencies; yet this sort of Gaming as it intermixeth with Trade, may have very ill Effects thereon, and thereby may be as prejudicial to that, as that which is more properly call'd Gaming hath been justly esteem'd prejudicial to the Publick Good.

For there being a great deal of Insurance to be made within the compass of their Adventures, by those who have such real Adventures; for others who have no Adventures, or in no Proportion to the Insurances they make, by their making such Insurances they must necessarily advance the Premio to be given, and thereby discourage the real Adventurer, in making his Insurance; and herein the Fair Trader may be prejudiced; and if there happen a Loss, the probability of which, is what the Maker of such Insurance without Interest hath in View; and if by the too frequent Repetitions of such Losses, the Writers of Policies are ruined, thereby the Fair Adventurer suffers in the Insurance he hath made within the compass of his Adventure, and by the failure of the Insurer is defeated in what he apprehended himself secured by such Insurance; and very probably the failure of many Insurers had been prevented had they not been drawn into this Insurance without Interest. These are some of the Inconveniencies which do arise from this sort of gaming Insurance, suppose they use nothing but fair Play; but

but there is a strong Presumption, that these sort of Insurances by being frequently made, may tempt some to take such Measures under-hand, that may be of much worse Consequence; and tho the Discoveries of such Notorious Frauds, have not been so very frequent as to Merit a particular Law to prevent them, yet from those which have been discover'd, we may suppose that many of that sort have escaped such Discovery, and there may be some Frauds practiced in this Way, which tho they do not come up to that pitch of Iniquity, as to procure a Ship to be lost, yet they are as direct Frauds upon the Insurer, that ignorant of what the Person who offers the Policy is privy to, writes that for Two or Three *per Cent.* which if he knew the true State of the Matter, he would not do for Thirty or Forty.

And one great Prejudice that may by this Practice be brought to Trade, is its being an Encouragement in sending Ships to Sea, that are not fit to go, or at least not duly Equip'd for such Voyages; or to take in such Cargoes, as may from the Port she goes to, be put on board: this the Person that Negotiates the Affair may be Conscious of, but can salve himself by very large Insurance; and the Underwriter may do it at a Premio usual for such Voyages, not being Privy to the Infirmary of the Ship, or the Insufficiency of her Tackle; and if she comes Safe, that additional Premio for such large Insurance, is answer'd by the Cheapness of the Ship, or sav'd by the scanty Outset: but if she should meet with such bad Weather, which she is not strong enough to bear, or provided to ride out, which is no great Improbability, then the very large Insurance made, may render the best Account, and so the Ship and Cargoe is lost to the Nation, and the Insurer impos'd on by the Insured; and if the Men have the good Luck to save their Lives, they may thank Providence for it. But the Insurer is not often the only Sufferer in such Cases, for many times other Merchants are drawn in to venture their Goods on Freight, and they being no more privy to the Inabilities of the Ship, then the Insurer, may not take the Advantage which the Owner hath in view, by making very large Insurance, and may thereby be great Loosers: However, whether the Loss fall on the Insurer or Adventurer, it is equally a Loss to the Nation, whereas was Insurance bounded within the compass of the Adventure, this Expedient which may sometimes en-

courage the sending Ships to Sea, not well equip'd, or which are fitter to be broken up, would be taken away, and thereby fewer Losses might happen to the prejudice of the Nation in General.

These Reasons I think may be sufficient, to shew that there is Ground to restrain a Practice, of which I can conceive no good Reason for its not being discouraged, and it may not be proper here to mention all the Devices which I may have heard of, or which may be conceiv'd, and the Practice of which may be encouraged by the want of such Restraint in the Value to be insured; least whilst I am endeavouring to prevent the Exercise of such a Craft, I might supply some with new Measures of carrying it on, I think what I have said is sufficient to make out that if Insurances were bounded to the Extent of the real Adventure, or near thereabout, it could be of no Prejudice to the Fair Trader, and might prevent what in the Whole must be Injurious to such Trader, and may sometimes give Opportunity to crafty Knaves to cozen honest Men out of their Fortunes.



[N. XXIV.]

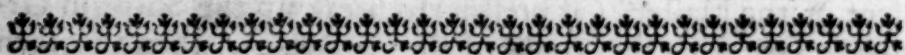
The Occasional Courant.

THERE is another Practice which the naming of seems to carry sufficient Reason, that all possible Care should be taken to remedy it; and that is the barbarous Usage which to the utter Destruction of Ships and Cargoes, that have the Misfortune to be Wreck'd, on our Coast hath been so long complained of: Many times a Ship that runs on Shore with proper Help and the good Fortune of the Weather's changing, might be got off again, or at least good part of her Cargoe, and the Ships Tackle and Apparel might be saved, but by the Inhumanity of the Country that comes Down upon her; this is often prevented, at least for the Account of the proper Owner: the first things they generally lay hands on, is to cut away her Anchors and Cables, Sails, &c. which being gone, it is impossible to make use of any favourable Opportunity of Weather that may offer to save her; but the People presently gathering

gathering like a large flight of Crows on a dead Carcase, they cut and tear every thing to pieces, and all is carried off, in contempt of Justice, and the horrid violation of that Humanity, which ought to be in its full Limits extended to People in such Distress. This is a Practice so Barbarous that there is no occasion to say any thing to expose it to the aversion of all civilized People, and its having been so long the Usage that Prescription may be pleaded in its Favour, is I think a very pressing Motive, for the Application of all proper Methods for the preventing it for the future: I shall therefore Essay at some Means towards putting a stop to this worst of Theft, which is so much the worse, because the commonness of its Usage, and its being encouraged by universal Practice from one Generation to another, seems to lessen those Restraints which the common Dictates of Natural Justice have implanted in Mankind; and if such Methods were once begun, the Deficiencies in them as they would soon appear in the Practice, so they might without much difficulty be remedied, and the Means brought to an effectual Method of preventing such Enormities for the future.

Suppose then that some proper Persons of good Abilities in such Matters, and honest Characters, whose residence is near the Coast, should be Commissioned by Authority to be Guardians of all Ships in Distress, within their respective Districts, and that whoever should help, or under that pretence should come on Board, should be subject in such their help, to the Direction of such of those Guardians as should be present; and such as they thought fit only, should be Employed: and by them their claim to a share in the Salvage, to be paid for such their Service, should be admitted and no other to be suffered to come on Board, or intermeddle; and if it should be thought proper by such Guardians, by the Consent of the Master, (if present) to break up the Ship, in Order to save what they could of the Cargo, &c. then that such part of the Cargo so saved, with any part of the Ship, her Tackle, Apparel, or Furniture, should be deposited in the safest Manner that might be, by the Direction of such Guardians; and that who ever should carry off any thing, or lodge it in other Place than so directed, or on whomsoever any part of the said Cargo, the Ship or her Furniture, Tackle, or Apparel, should be found, should pay double the value or suffer corporal Punishment, with proper Encouragement,
for

for Informations of any such purloining. That the necessary Means for preserving the said Goods from Damage, or preventing such Damage, as they had Received from growing worse, by lying wet together, should be used under the Direction of such Guardians; and the Accounts taken of all such Goods saved, in concert between such Guardians and the Master; and such Goods having all due care for their necessary Preservation, should be a Security for the payment of the Cost expended thereon, with all due Allowances for the Care and Trouble which had been bestowed in the Affair; and upon payment of which they should be delivered to the proper Owners, either by Avarage or Mark, as the Circumstances of the Case required: and which had we Maritime Laws and a Maritime Court, that would be the most proper place to weigh those Circumstances; and if not agreed amongst the several Parties concerned, to determine according to the Merit of the Case; and the Directions of the Laws to be made in that behalf. And as there are other Cases wherein Ships may be in Distress near the Shore, though they do not come within the Consideration of Wrecks, yet it is necessary to their Circumstances, to make Signals for Assistance to come from the Shore to their Aid, and wherein these Guardians or Sea-rights might be of great use, if they were within notice of such Signals, by directing the Assistance sent off; but if none of them should be within the reach of such Signals, or have notice thereof, and consequently could not give such Direction, yet they might be of use by adjusting the Recompence to be allowed for it. Whereas sometimes Masters are much imposed on, and sometimes they find Means to avoid giving any tolerable Gratitude for the service done them, to the discouragement of others ventring through some Difficulties, to aid those in such Distress.



[N° XXV.]

The Occasional Courant.

There is another Occurance which tho it may not be thought to come properly in under the Head of Trade, yet it proving too often the Wreck and Ruin of Traders Fortunes,

Fortunes, I think it may properly enough be joined with this Subject of Wrecks ; and that is the Fires which happen in their Houses and Ware-houses, which tho I have such charitable Apprehensions as to believe, that they begin most usually by unhappy Accidents ; for tho vile Designs seldom come to the height, as to be the first Occasion of them, yet these Misfortunes may give Opportunity to some, to put in Practice their vile Inclinations, for which Reasons of the hope of Plunder in some, and by the Folly of others, in Prosecuting a ridiculous Inclination of running to see every thing, tho to their own hazard, and where they have little Abilities or no Intentions of serving those in Distress, by the concurrence of mischievous and useless People which on these two Occasions resort to the Places of these Accidents, and are there under no manner of Direction or Order, ariseth a very great Prejudice, and Hindrance to the extinguishing those Flames ; which if they were managed with any Conduct, and proper Persons had the command of a suitable Number of Men, to be applied to the Service, there might in all probability much less Damage insue, and many of these sad Accidents might be prevented from spreading to that Extent they too often do ; for the Confusion and irregular Management, and the Hindrance which is promoted by Crowds of useless People, many times is the Occasion of great part of that Destruction, both in Buildings and Goods, which if there were due Orders to be observed, and proper Persons to be empower'd to command, and take the necessary Care of putting them in Execution, those Flames might doubtless be sooner extinguished, which under the confused and irregular Applications which are now made to that purpose, many times extend to a much greater Damage, then could be at first thought probable that they should. These Things must be obvious to those that have made any Observation of the Confusion, which the Fright generally puts those in who are immediately concern'd, or in the most eminent Danger, and the irregular Transactions which must be the necessary Product of a confused Concourse of People, where every individual hath an equal Share of the Direction.

To bring these Matters under some Regulation, and consequently to a greater Probability of the sooner stopping the great Devastations that sometimes happen thereby, I apprehend nothing could be more likely Means then to invest
some

some Number of proper Persons with an Authority, to take upon them the Command and Direction of those who come to give their charitable Assistance in such Emergencies: And for the Cities of *London* and *Westminster*, and Subburbs, as likewise for all Cities and Towns, I apprehend that the several Officers of the Militia may be as fit Persons for this Occasion as any, they generally knowing each other, and what Post each bears, and thereby their Superiority would not be to be disputed; but the superior Officer that did appear, might order such other to take the Direction of one side, or one part of the Fire, and so there might soon be proper Persons at hand, to carry on each part of the Work in some Regularity; they might have Caps or Hats, which they should always keep by them, to be put on on such Occasions, which should distinguish their Posts, and be a Badge of their Authority; and that all who would not put themselves under such Direction should withdraw under a Penalty: Some might be assigned to the Direction of the extinguishing the Fire, and some to keep open the Avenues, and prevent their being stoppt by the irregular Motion of Carts, and unnecessary crowding of useleſs People; and to take care that Goods removing were not run away with. Were these Measures once set on foot, they would soon fall into a regular Method of executing them, and such Orders might from time to time be given by the Lieutenantcy, as might obviate any Objection, and reduce any Irregularity. And those Gentlemen who had hereby such useful Authority, would be turning their Thoughts as well to the best Methods of exerting themselves on such Occasions, as they do now to the necessary Measures of disciplining their Companies, and keeping the Peace of the City when call'd on the Guard. And as there is by a late Act of Parliament excellent Care taken for the Supply of Water, Engines, and Buckets, so if there were some other useful Implements for such Purposes deposited in some proper Place of every Ward or Parish, as Ladders, Hooks and Poles, Pick-Axes, Crows, &c. they might be very Serviceable on such Occasions. And tho I am of the Opinion that blowing up Houses doth oftentimes do little or no good, and oftner puts a stop to the working with Water, which might be to better Purpose; yet when there is a Necessity allowed for that Method, I apprehend it might be done with burning much less Powder, and consequently with much

much less danger of Damage thereby, and tho' I am no Engineer, I will venture to mention my Thoughts herein; and if they give any who understand those Matters a hint to any thing that may be useful I have my Aim; if not I only expose my Ignorance in what I have never had Opportunity of Informing my self. Suppose then there should be a sort of a Mortar, with its Muzel exactly upwards, and the Chamber to hold just a sufficient Quantity of Powder; and this should be placed in the Cellar, with a piece of Plank laid over the Muzel of it, and fixed down by a Perpendicular piece of Timber, to be placed under the Principal Girder of the House: These I apprehend would toss up the House, or at least those Bays of Building which depended on, or were fixed to that Principal Girder; and one or two of these Mortars might be used as Occasion required; and as this, or something of this sort, by the contrivance of those skilled in these Matters, would require the burning much less Powder than is now generally used on such Occasions; it would thereby be attended with less hazard of doing Mischief; which by burning so much Powder is sometimes done, by tossing some of the Materials of the Houses to a great Distance; and it would likewise be less subject to set the Materials of the House blown up on Fire: And such sort of Mortars as these of Cast Iron, would be no great Charge, and would be found in clearing the Rubbish, in all Probability without being damaged; and I apprehend might be made of such Weight, that if they were supplied with proper Handles to sling them by, and proper Utensils for their Movement, they might by the strength of five or six Men be Portable.

But as I have owned my Ignorance in these Affairs, so I have at present no Opportunity of being better informed; therefore must leave this Matter to be thought of, or at once rejected by those who are more proper Judges, whether any thing like it may be made Practicable or not; but the bringing the Management of such Accidents into as much Order and Regularity as may be, would doubtless often prevent Fires from spreading to those Extents which now too frequently happens.

[N^o XXVI.]

The Occasional Courant.

AND since I am got into the Subject of these Misfortunes, which too often introduce the Wreck, and Devastations of Traders and their Families, I think I should very abruptly conclude this Treatise, if I did not bestow a Paper or two in the Consideration of their Case, (and those concerned with them;) who by the pressures of some of the Mistortunes I have been Writing of, either at first or second hand, or by some other unhappy Turns of Trade; or it may be because their Genius or the Notions they had taken up, of what Mankind (is or ought to be) did not induce them to be so Sharp in their Dealings, as may be sometimes requisite to the Advancement (or Preservation) of their Fortunes. If such as these should not be continued under some merciful Considerations of the Legislature, what a great discouragement must it prove to many to bring up their Children to Trade, whilst we daily see the Success of it so very precarious, that though some rise to Vey with Nobles in their Estates, from little or no Beginnings, yet others are reduced from considerable Fortunes (or good Competencies) to the most deplorable State of Bankruptsy: And if you were to be the constant Companion, or have the most familiar Intercourse with the Men whose Fortunes are attended with such various Issues, you might before you were privy to the Events, oft be mistaken in your Judgment of which seemed the most effectually accomplished for the probability of Success. And to Men in Trade (in a particular manner) you would find the Words of the Royal Preacher applicable in their full Extent, Eccle. Ch. 9. v. 11. 12. *I returned and saw under the Sun, that the Race is not to the Swift, nor the Battle to the Strong, neither yet Bread to the Wise, nor yet Riches to Men of Understanding, nor yet Favour to Men of Skill, but Time and Chance happeneth to them all. For Man also knoweth not his Time, as the Fishes that are taken in an evil Net, and as the Birds that are caught in the Snare, so are the Sons of Men snared in an evil Time, when it falleth suddenly upon them.*

This

This hath been so obvious to all Nations, in all Ages, that none are without some Method of Relief, to such as fall under the Misfortunes of being by the unhappy Turns of Trade reduced to these pitious Circumstances.

In Popish Countrys, the Church assumes a power of Protecting them, till they can bring their Creditors to a Compliance, and though that Power was taken away here by the Reformation, yet the necessity that such Relief should by some Ways or Means be afforded, did by a sort of Prescription retain that Priviledge to the Ground, where some of the Frieries had stood, and was so continued for some Ages; till the Parliament lately took the ill Ulage thereof into their Consideration, and by an Act withdrew such Priviledges from those Places: but the same Parliament provided a much better Relief for such untortunate Traders, by putting it out of the Power of two or three obdurate Creditors, to defeat the Debtor of his Liberty, and the rest of the Creditors, of their equal Share of what was left. And by such Relief (obtaining their Liberty) many have been enabled to support and bring up their Families, and introduce them into some way of getting an honest Livelyhood; others out of their future Earnings have paid to their Creditors farther then the Law obliged them: And with some their former ill Fortune hath taken so very different a turn, that they have paid their whole Debts, and raised valuable Estates to their Families; all or most of whom had it not been for those Laws, must probably have lain in obscurity, to the intire defeat of their Creditors; and when they had spent the little they had carried off with them, been reduc'd to extream Necessity, and seen all the Miseries come on their Families, which are the necessary Consequencies of want of Education, want of Employment and want of Subsistence; all which is the usual Result of the Fathers being abridged of his Liberty: And it is a very lamentable Case in such an extream Manner on the Debtors, and to the Prejudice of the Creditors, thus to entail the Misfortunes of the Fathers on the Children, though these Misfortunes should be mixed with some Faults..

Therefore this which is the Case of so many in the present Age, and which in most of the Instances thereof, carries all the Circumstances which can move Compassion, and which must likewise have so ill an Effect on the next Age, as to introduce many into it, not used to Labour, not well Educated,

not bred to Employment, not provided with Subsistence, and all that train of ill Consequencies to themselves and others, which too often attend these unhappy Circumstances. A Case that carries all these sad Effects with it at present, join'd with the Reflections of those sadder Events that may be expected to follow it, (if some Relief is not speedily apply'd to it) surely cannot miss the Consideration of our Legislature: And tho the Apprehension of the Improbability thereof, may encourage some to persist in withholding their Concurrence with other Creditors, because those who want this Relief, have it not in their Power (for want of Liberty) to sollicite for it, tho some may conceive that from this Reason they are secure against the Apprehensions of such an Act passing, and therefore may stand off from any Agreement, in hopes to get better Terms than the rest of the Creditors, or to gratify the Resentments they have conceiv'd towards their Debtors. Tho' these may be the Motives some act by, yet this must doubtless be a pressing Cause to many worthy Patriots, the more to forward such a necessary Settlement; for tho it must be acknowledged in many Cases, that the want of Soliciting in those, in whose favour a Law is intended, may imply no great Necessity for such a Law, yet when we consider that the want of such a Law, prevents them who want it, of even Soliciting in their own Behalf: What can be a more moving Argument for that Relief, than the want of a Power to make the necessary Applications to obtain it? Unask'd for Charity is generally most acceptable and best bestow'd, and when the Want extends to deprive the Person so wanting of a Power, in a proper Manner to sue for Relief, how necessary is such a Case to be taken into Consideration, tho without the previous Applications that might otherwise be esteem'd materially requisite thereto: for in this Case the fear of offending some of their Creditors, may prevent each Individual from even signing a Petition for what they are most desirous of obtaining, least the Consequence of asking (if they should miss the desired Success) might still augment the Displeasure of some of their Creditors. It may be thought and indeed it seems but a rational Conclusion, that amongst Christians there should be no great Necessity for a Law to provide for Relief in such Cases, for considering the direct and positive Injunctions of the Christian Religion to forgive, and the tremendous Inforcements thereto, which can hardly

hardly be supposed but must take effect on those who believe that Religion, and that such Forgiveness which is under such fatal Penalties enjoyn'd, in its most restrained Sense, must be extended at least to the Forgiveness of so much, as the Debtor is utterly unable to pay; or we must allow that those Precepts were in no Instance whatever intended for Practice: yet notwithstanding this we find they have but little Influence on some that would be thought to have Christianity much at Heart, for some Men seem to use their Religion as they do their best Apparel, which is only to be put on on *Sundays*, and on *Monday Morning* it is with them laid up, as a Thing, the Consideration whereof, is not fit to be brought into secular Affairs. And should a poor Debtor presume to attend such an one on a *Sunday*, because he durst not be seen by him all the Week, he would think it answer sufficient that that was not a Day to enter on the Debate of worldly Business: And if they are attended by a Solicitor in the Week, they think it is not their Business to make use of Arguments from Religion in favour of their Clients: Thus do some evade the Force of those Motives when they thwart their Inclinations; and tho they sometimes appear to be as Cautious of any thing that might sully their Professions, as they would be of the Cloaths with which only they seem to wear it, yet they take effectual Care, as well in Practice as in Time, not to mingle Religion with Secular Affairs. And when they are on the *Exchange*, they do as intirely banish all Effects of the Motives of Christianity, as they do at Church banish all Thoughts of the Profit of Trade; by these or such like Methods as these do some Men in their Practices so effectually stave off those Inducements, that from thence there arises too little Objection, for the Necessity of Relief in this Case by a Law, whilst we see some who in their Profession seem to shew much respect to the Form of Godliness, and at the same time in their Practice too visibly deny the Power thereof.

But still it may be objected, that tho the Motives of Christianity have not their due Influence on all, because that some who profess it by Virtue of their Education only, or by its being established by our Laws, seem to have little regard to its Precepts; yet the Principles of Humanity and Generosity, or at least the love of their own Interest, should prevail with Men, to take as a full Satisfaction all that is left;

left; and by giving the Debtor his Liberty admit him to use his Endeavours at making farther Restitution, and thereby put themselves under a Possibility at least, of having from him at one time or other (as Success should attend him) some farther Acknowledgement of their Kindness; one would think indeed that these Motives carry with them a Force that would generally prevail, rather than the obstinate Suspension of all Methods of concluding such Affairs, which puts the Debtors under a Necessity of spending in Confinement and Misery part of what he intended for an equal Distribution to his Creditors; and many times by a Weakness (too incident to Humane Nature under heavy Pressures) induceth him to fall into that way of Living, in order to forget his Sorrows, (at least for that Afternoon) as may soon waite the little he has in Possession, and if not speedily reliev'd render him Incapable and Listless to any future Application,

These Considerations of Christianity, of Humanity, of Generosity, and all join'd with Interest, one would think, should Universally prevail, and doubtless they do in the general: But in a List of Twenty or Thirty Creditors, it is not Improbable as the World goes, but that there may be Three or Four, who notwithstanding all these Considerations, may render as ineffectual all Methods for making the most of an unfortunate Traders Affairs, and restoring him to his Liberty, as if the whole Number were of the same Sentiments; for some Men to hold themselves so attacq'd to a Peake they please to take up on a Disappointment, or so vehemently inclin'd to make the utmost Effort to advance their own Interest above others, who are embarked with the same unhappy Person; or are so affected with a backwardness in giving their Consent to what they are to be losers by, and so very loath to come into any Measures which must determine in such Loss; that for the one or the other of these Considerations, they will stand off from accepting any Propositions, which many times proves as Mischievous to themselves as well as to the rest of the Creditors in the Affair of that Debt, as it is fatal to the Person and Family of the unfortunate Debtor: This therefore naturally leads me to the Consideration of the Case of Bankrupts, as it relates to the Interest of their Creditors, and the Service of the Publick, abstracted from any Motives of Compassion towards the Debtor.

And

And herein if I extend this Debate to a greater length than may be thought requisite ; I hope it may be the rather excused, because tho' the settling this Affair under the best Methods to the Interest of Trade, must be allowed to be of very great Consequence thereto, yet I have not met with any Treatise, that hath statedly taken it into Consideration ; I shall therefore Endeavour fully to debate this Matter, in every View ; as to the Interest of Creditors in particular, and the general Advantage of Trade, and the Publick Good of these Nations.



[N^o XXVII.]

The Occasional Courant.

I Am now to consider the Interest of the Creditors of Insolvents, and the Publick Service, abstracted from any Motives of Compassion to such Debtors. And herein it may give us some Light if we take a view of the Methods used in this Case, by a Neighbouring Nation ; who having been by Trade only, raised to the Figure they now make in *Europe* ; and their most Politick Care of Trade being so essentially necessary to the Support not only in the Station they now bear, in respect to their Neighbour Nation, but even to their very Subsistence : They do undoubtedly with the utmost Applications, study those Measures that may most effectually tend to the Support and Increase of their Commerce.

And notwithstanding it may be reasonably thought not of sufficient Force barely to cite them as a President, yet those Reasons which induce their Measures so far, as they answer the same Weight here as they do with them, no doubt but may be of some service with us to set the true Interest of Trade in a better Light, which though it is not of such essential Consequence to our Subsistence, as it is to theirs ; yet is of very great Importance to the Increase of our Wealth, Power, and Conveniencies of Life. And therefore the Consideration of those Measures, which their necessity of promoting Trade to its utmost Advantage, hath made so requisite to them ; with
all

all imaginable Precaution and Deliberation to Cultivate, may be of some Service to us, so far at least to debate and consider them, as to find out wherein they may be of the same Use to us, or why we should reject, or how far we should concur with the same Methods, or so much of them as shall suit our Interest, in the Case of those whose Circumstances are in the same Condition.

And their Usage in the Case of Bankrupts is, *viz.* Upon any ones finding himself under these Circumstances if he sees it necessary to his Affairs, upon Application to the States, he hath in Course a Protection granted for his Person, for four or six Months; and renewed as there is Occasion, in order to make the most of what he hath, and settle his Affairs in the proper Manner, to lay them before his Creditors, who at the same time have it in their Power (if they suspect his Intentions) to take the necessary Care to prevent his Embezlements. These are the first Measures taken in such Affairs, though by the general Usage there is seldom Occasion to ask such Protection for the Persons of such Insolvents.

Upon his calling his Creditors together, and making his Propositions to them, in the first place (if he hath a Family) what the Wife brought into Stock, or such part as was stipulated on the Marriage Contract, is taken out of the best Effects for the use of her and her Children; then the major part of the Creditors in value come to Terms, wherein Twenty to Twenty-five *Per C.* is generally Accepted of; but if it comes to One Third, it is thought a very good Issue to a bad Matter.

And what such major part of the Creditors do agree to, is conclusive and binding to the rest.

And tho' possibly was Twenty or Twenty-five *Per C.* or One third offer'd here, there would be rarely a Set of Creditors found, but that some would say they would sooner loose all than Accept it, and so it might happen in the Issue; yet by our Management I am apt to believe, that Ten *Per C.* in an Average is not paid of all that is owing by one Bankrupts; for I have known where Eight or Nine Shillings in the Pound hath been offer'd, and yet by the Management of Affairs in our Methods, it hath been brought to less than Eighteen Pence, and sometimes to nothing. And after the Creditors have without any particular Account been frequently told, that the Charge of the Statute hath swallowed up all, the Matter
hath

hath been forgot and determined in an entire Loss to all but the Assigns, which is no uncommon Case. But to return to the Account of the practice of the *Ducth*,

If the Bankrupts Circumstances are such, that he can offer no Terms, that will be accepted of by such major Part of his Creditors, then the last resort the Debtor hath, is to Cess, that is to make Oath, that he hath not reserved to himself above the Value of either One Hundred, or Fifty Guilders; and hereupon his Person is discharged from farther Demand.

These, or to these purposes have been the Methods of these cunning Men in Trade (to whom the World Universally allows that Character) and which they have for a long Time made their constant Usage in such Cases, without ever having found Cause materially to alter them. But as I have said before, my Intention of quoting this Example, was not from the meer Weight of the President, to enforce a Reason to bring the same Usage into Practice with us; I shall therefore examine of what Service to Creditors and to the Trade of the Nation, the introducing Methods of this sort would likely prove; or at least such part of them, as would be most suitable to our Affairs, and then leave it to the Consideration of abler Heads to determine, how far or what part of these Methods might be of Service to the Publick with us, by being to the general Advantage of Creditors concern'd with such, and to the Encouragement of the Trade of these Nations.

Now it must be allowed, that it is the Interest of all who have the Misfortune to be concern'd with an Insolvent Person, that the Concerns and Effects of that Person, should in the best Manner be preserved, and made the most of, in order to their extending, as far as may be towards the Satisfaction of his Debts.

And what can be a more likely way to produce Effects directly contrary hereto, then to have such a Person be to abscond from the Place where his Effects are, and the Presence of all Persons with whom he is concerned; is not this often found to produce such Imbezlements, Wasts and Mis-managements, that in many Instances where the Debtor at the Time of his withdrawing, by making the most of what he had, could have paid better than one half; before he could obtain the Liberty of looking after his own Affairs, they have been reduced to less than would answer

One Fourth ; and when his Creditors have been pleased never to admit him to that Liberty, they have not made out to One Eighth : For in many Cases it is but too visible, that the Effects and Affairs of such Persons, are treated not unlike to that Usage I have been complaining of, being the Practice used to Ships and Cargoes Wreck'd on our Coast ; all Advantages are taken by some, and when the Man's Circumstances keeps him from appearing, and consequently getting together what his Misfortunes have left him, and making the best of it, others take Opportunities of making their Advantages of his Necessities, to the rendring his bad Circumstances still much worse ; and it being out of his Power to recover the Debts due to him, some of them often grow bad : And when Factors abroad hear of the absconding of their Principles at home, they expecting no farther Intercourse with him, what Effects are left in their Hands are too often in a great Measure esteemed by them as a Perquisite to be taken to their own Use.

These Things are so obvious and generally known, that I have frequently observ'd that it is made use of as an Argument to bring Customers to Shops, by printing in Bills, that they buy the Goods of such as fail, and therefore can afford very good Penny-worths.

This Management must be so Injurious to the Interest of the Creditors that it evidently proves, that the Usage of the *Dutch* in giving Protections to the Persons of such Insolvents, for a competent Time, in order to their making the best of what is left, is wisely providing for the general Interest of the Creditors concern'd with them. I shall in my next proceed farther to consider the other Parts of their Practice before-mention'd.



[N^o. XXVIII]

The Occasional Courant.

I Am now to proceed in the Consideration of the Methods I have Quoted, as to Insolvent Traders ; and as to that part of them in preferring the Interest of the Wife and Children,

dren, before that of the Creditors; the Necessity their Circumstances puts them under of promoting and supporting Trade to its utmost, may make it requisite to them, rather to spread a Loss to many, that may be better able to bear it, than by utterly sinking one Family, to loose a Member of the common Weal of Trade: for so Zealous are they for promoting Trade, that they take all possible Care to prevent even the Misfortunes of the Fathers from discouraging the Attempts of the Children in the Prosecution thereof. And many times those very Trades, which by unlucky Turns have brought the Fathers to a necessity of Compounding, by better Success have raised the Children to make a considerable Figure in the World. This Method may be therefore requisite to their Politicks, because Trade in its several Parts is the chief Business that Implies the Bulk of their People; and they continue in it from Generation to Generation, without any Expectations or Views, that their Family to the last Posterity should ever quit it: but with us it is different, for not often above two, or very rarely above three Generations continue in Trade, by that time they either get Fortunes to enable them to quit that precarious Employment, and live on as Gentlemen; or by those Misfortunes, which by our present Methods are irretrievable, the Family is rendered utterly incapable to go on with any Trade. But tho' we are not under those strong Inducements to support Trade; and therefore if some Members thereof, which fall under the Pressure of its Misfortunes, are cut off from giving further Application to the Support of Commerce, it may not be so injurious to the Circumstances of our Nation as it would be to theirs, by so much as Trade is not so Essential to our Existence as it is to theirs; yet however as Trade is of Consequence to the advancing of our Wealth, &c. some support to Families that fall under these Misfortunes by the ill Turns thereof, so far as it may be likewise to the Advantage of the Creditors and the Publick Service, may be expedient to be allowed in such Proportion to the Family, or Circumstances of the Debtor as may be necessary for a present Support, till it may be possible for him to get into some Business. This I apprehend to be a good Expedient, not altogether from the Motives of Charity and Compassion, for I am now Considering the Interest of Creditors only, and apprehend an Allowance for such present Subsistence may be very requisite thereto; for considering the

Force of the Temptation, which the Apprehensions of being entirely Strip'd of all present Subsistence, and Necessaries of Life must lay him under, who hath a Family to Support; he must have a greater Stock of Faith and Virtue than is common in this Age, if he is not thereby induced to endeavour to conceal something for that purpose, and possibly to get what he thinks absolutely necessary to this Use, and so to fix it as it may answer his intent, may be of much greater prejudice to the Creditors, than if the Debtor had an Assurance that something to that purpose should be left to him, if he approved himself of Integrity, by rendring an honest Account of his Effects, to the Satisfaction of the major Part of his Creditors; therefore the Interest of the Creditors, may induce to some such Allowance for Encouragement, tho' we have no Regard to the *Dutch* Maxim, that it is better to the Publick, that several suffer something, than to have one Family intirely cut off from Trade, which may in time restore them to their former Station, and to give their proportionable Assistance to the Publick Service. Herein is a difference betwixt the Circumstances of our Nation and theirs; and though these their Methods, may be Founded on the best concerted Politicks for them, yet the Reasons whereon they stand, are not so necessary to our Existence as to theirs; I do not therefore propose them to be followed as an Example to the Extent of their Measures, but only so far as may be to the Interest of our Trade, by giving the Creditors of Insolvents in general a much stronger Probability of being the better dealt with; for reasonable Encouragements are usually found more prevailing on the Generality of Mankind, than all the Severities that can be inflicted.

I shall now proceed to consider their Measures of making the Agreement of the Majority of the Creditors in Value conclusive to the Minority.

This carries such a plenitude of Reason with it, that the very recital of it seems sufficient to recommend it to all, as a Rule founded as well in the most exact Equity, as consummate Prudence; for when there is Deficiency, so that an inevitable Loss must be sustain'd, who can be more proper Judges of the best Method that can be taken to render it as little as possible, then those who must bear the major part of the Value of such Loss? It behoves them to sift every Circumstance, and weigh every Probability that can be con-

sider'd

sider'd, in the taking the most effectual Means to make the most that can be of such an Affair; and when they have so done, it's very hard on them, and injurious to their Interest, to have it in the Power of the Minority to defeat all their Proceedings; and by their standing off to render the Loss of that which might have been saved to the Major in Value, more considerable than the whole Debts of those, who by withholding their Concurrence, break the Measures which the major Part had agreed to, and which must visibly be much more injurious to such major Part, then the complying therewith could possibly have been to the Minor.

There can but one Objection lie to this of its being the most infalible, as it is the most equitable Method, for the advantage of the Creditors in General; and that is the obtaining such Majority by Corruption, or by some of them getting separate Terms for themselves, or pretending to Debts which are not real: but this may be easily fenced against, by making such Corruption or separate Terms, a forfeiture of the Debt or pretended Debt (to the Use of the rest of the Creditors) of those who shall be guilty of such Practice, and the defeating the Discharge of the Debtor who shall give it, with a Salvo of such Penalty to him, that shall first give the Information, and convict the other of such Practice: This would be an effectual Means of preventing such an Attempt; for it's hardly possible to suppose, that the Debtor and Creditor should each of them concur in running such Hazards to themselves. This therefore would doubtless be an effectual bar to this Objection; but as Matters now stand, Objections of this sort oftner lie against those which are of the Minority in Value: for as I have heard from those who have used to solicit for Insolvents, that it is not an unusual Answer for some to argue in the following Manner, *Viz.*

My Debt is but small, in Proportion to what he Owes, and therefore in his Concerns it will make no great difference for me to have some particular Consideration; and it's more the Debtors Interest, and those that have large Concerns with him to agree to allow it me, than to put a stop to the making up his Affairs; for if I loose it all it will not be of great Consequence to me, therefore I will never comply to any Terms offer'd, unless I have such a Consideration by the by: And it's better for him and those which have the largest Concern

to

to allow me what I propose, then for him to lie by it for his Life Time, and starve himself and Family, and the large Creditors to loose all. And upon farther Application, in hopes of meeting with better Temper, they have answer'd, You know my Resolutions, and they are fixed, I know the worst is but to loose All, therefore unless you can find Means to comply with what I have propos'd, you come in vain to me.

These are the Men that Clamour at the Hardship of having it put into the Power of others to discharge their Debtors; for was it not with a View to such ill Practices as these, what can be fairer and more fit to be concur'd with by all, than in an Affair where all are in Proportion to their Debts alike concerned; and where the Concurrence of all is Essential to the mutual Interest of every Individual, then that what the Majority agree to should conclude the Whole? Without this it can hardly be thought Practicable to make up such an Affair, for in a Number of Men it is rarely found but that some will be so intractable to all reasonable Measures propos'd, or so tenacious of their own Sentiments, or particular Interest, that they will thereby defeat any Conclusion, and to the prejudice of the whole, such Affairs must stand suspended, till some of the concerned are complied with in the manner above hinted; and every Creditor, or at least so many may be aiming at those Measures, which may make it as impossible as it is unreasonable that should be complied with: for may not every Creditor expect to have something by the by, as well as any one of them, except it be such who from a Principle of practicing by the Rules of Christianity, or generous Compassion, will not seek for it; and it may be feared that there are few Sets of Creditors, but wherein some will not govern their Proceedings by those Sentiments, and if the Debtor hath made a fair Proposition to the extent of his Abilities, it is utterly out of his Power to make such under-hand Agreements with any particular Creditor. But if he has with a View to its being necessary to his Discharge, reserved a Power so to comply with such of his Creditors who insist thereon, then the generous and more candid of his Creditors are cheated, to supply those who are more Over-reaching and Obdurate; and the Apprehensions of such under-hand Agreements with some, is no small Discouragement, to the making a speedy end with Insolvent

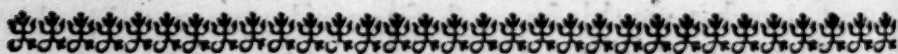
solvent Debtors, and the delays therein hath been usually found much to the disadvantage of the Creditors in general.

And this must soon prove such a growing Evil, that it will utterly defeat the making up of the Affairs of any Insolvent Trader; and if not speedily prevented, may prove as Mischievous to Trade, and the Interest of the Creditors of such in general, as the Losses which unavoidably happen by the Misfortunes of these Insolvents would be, if their Affairs were made the most of, and negotiated with such Management, as might in the best manner with all convenient speed, equally secure to all the Creditors, a fair Dividend of what was left. But the Effects of the contrary Measures, (to the great prejudice of Creditors) are too Evident, by the large Increase of Buildings in the *Mint* within this first Year of the Expiration of the Statute for clearing Bankrupts; in which Receptacle of Misery, many being prevented by three or four of their Creditors, from bringing their Affairs to any Issue, Live, and in a comfortless manner (destructive to all good Purposes) spend what they can come at, and the rest falls a Prey to those from whom by Reason of their Bankruptcy they cannot recover it, or is swallowed up in the Charge of an ineffectual Statute, to the entire defeat of all the Creditors; whereas was the Agreement of the Majority of the Creditors in value, conclusive to the whole, all these Mischiefs might be prevented; and all the Creditors in the most concise and sure way, be equal Sharers in Proportion of what the Insolvent by collecting his Effects together in the best Manner, and making the most of them, could pay.

And hereby would be most frequently prevented, the great Charge and dilatory Proceedings of Statutes of Bankruptcy, which rarely prove to any good Effect, without the Information and Assistance of the Debtor, and in which the large Contributions sometimes laid thereon, discourageth some Creditors from coming into them; but they rather chuse to throw up the hopes of saving any thing, than to be at farther Disbursements upon such great Uncertainties: and hereby likewise, the Debtor (if he approved himself of honest Intentions) might soon be restored to his Liberty; which is what some Regard should be had to, not only for the sake of the Man and his Family, but as well for the Interest of the Creditors, by putting them under a Possibility of

of some farther Satisfaction, which in many Instances hath proved considerably to their Advantage; as likewise for the Interest of Trade in general, for the streightness of these Mens Circumstances, makes their utmost Application essentially Necessary to their Support; and by their Acquaintance in the World, and the Experience which they have by their Mistortunes bought, they may be of great Use to other Traders; and for the sake of Brokeridge, take that laborious Part on them, which those of plentiful Fortunes many times care not so much to interrupt their Ease and Pleasure, as is necessary to pursue Trade to its utmost Advantage; therefore without the Assistance of these Men, it may not be so effectually promoted.

And herein it would generally prove to the Advantage of Infants, if Executors or Guardians were impowered to Act for their Accounts, for many times the Apprehensions of being lyable to answer to the Infants when of Age, for such part of the Debt which they agreed to quit the Debtor of, induceth them to refuse to agree to any Terms offer'd, whereby the Infants may be defeated of the Whole, and by such delays a good Composition and the Improvements which might have been made of it, for their Accounts, is very often reduced to an entire bad Debt, before they become of Age to be Parties to such Agreement; therefore unless there is some Provision in this Case, a Debtor to any Infant can have little hopes of being discharged; which may prove Injurious not only to such Infant, but all the rest of the Creditors concerned with him.



[N° XXIX.]

The Occasional Courant.

I Now come to the last Result mentioned to be practiced in *Holland*, in the concluding the Affairs of Insolvent Debtors, which they call Cessing; and to consider how far this is attended with such Politick and Prudent Views, for the good of the Publick and Trade, as the Nature of the Case will admit of.

The

The Substance of this is, that when any Person maketh Oath, that he hath not reserved to himself above a certain Value, of five Pounds or thereabouts, he is thereby discharged from his Creditors.

Now this seems the hardest Case on Creditors, and yet if duly consider'd, is no ways to their Disadvantage in the general, for if the Man hath it not, he cannot pay, and therefore whether he stands charg'd or discharged, it is at present the same thing to the Creditor; but it is of some difference to the Publick, for was not such a Person to be discharged of his Debt, he must either fly into some other Country, or be in perpetual Danger of being thrown into Prison; the former of which is much rather to be chosen, but in either of the two, he is lost to the Publick. And these wise People are fully apprised, that their Interest consists in the Number of useful People, and that therein the Poor are in their Stations Serviceable, as well as the Rich: therefore when it is no ways injurious to particular Persons, as in this Case it is not, that which is of the greatest Service to the Publick is most certainly fittest to be put into Practice, for the sake of the Publick Service, besides the Motives of Compassion to the Man and his Family. All the Objection that can lie to this Practice, is the same which lies to all Business where an Oath is required; that is, a Supposal that the Man may Swear falsely; but such false Oaths may be detected, and corporal Punishment may deter from such an Attempt; therefore this Supposition, tho it ought by the best Methods be guarded against, yet it ought not to be so far admitted, as to defeat what is injurious to none, and a visible good to the Publick, as well as essentially Necessary to that Charity, and good Will to all Mankind, which is the most beautiful Character of Humane Nature.

And if this Compassion was to be extended to all Debtors, not excepting those to the Crown, at a certain Sum fixed, and under such Cautions and Regulation as might be concerted, I can't perceive what prejudice to the Publick it would be; whereas for the want of such Relief, some who have been largely indebted to the Crown, being aware of the approaching Storm coming on them, have transported themselves and Effects into Foreign Countries, which if their Persons could have been discharged, they would have delivered those Effects towards Payment of their Debts, and stay'd at home:

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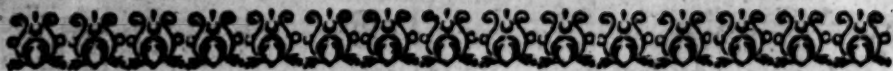
Others

Others lie in Prisons here, and have not wherewithal to make the proper Applications for their Discharge, and consequently without any possibility of paying any part of the Debt.

And tho' it may be the Occasion of spreading infectious Diseases, yet I apprehend it can't be conceived to what good Purpose it can tend to keep such vast Numbers of Men in Prisons for Debt as are therein detained, for the Reasons of all Persons not paying their Debts, must be either because they cannot, or because they will not, or a mixture of these two Reasons together; that is, because they cannot pay their whole Debts; therefore by living within the Limits of a Prison, they will protect themselves from paying any part of them. Now, if we consider Persons under these three Circumstances, it will be found that the Use of our Prisons for Debt do not answer any desirable Purpose in any of these Cases; 1st, If a Man can pay no part of his Debts, by the Confinement of his Prison, he is rendred utterly Incapable to follow any Business, to such Effect as may give another turn to his Fortune, and thereby enable him to discharge his Obligations; therefore by such Confinement the Creditor is bereft of a Chance, which sometimes might prove much to his Advantage. 2^{dly}, As to those who cannot pay the Whole, by their being confined, and thereby being oblig'd to spend out of the Principal, they must soon be reduced into the Circumstances of the former of being able to pay no Part; and consequently the Creditor must be defeated of what he might have had, and the Impossibility of his ever having any thing, must daily increase. And as to the Third Sort (if there are any that are so abandon'd of all Principles) a Prison as they may make it, by having the Command of Money, may by them be esteem'd no great Hardship, whilst in their closest Confinement they have the Extent of a Parish for their Rules; and in Term Time for a little Charge, may spend their Day where they please, and at no Time need want the Entertainment of those sordid Amusements that may suite with their Inclinations; and as long as they can by parting with some small part of their Money live so much to their Satisfaction, they will hardly ever think of parting with All for a farther Enlargement into the World, which by their being used to such a sort of Life, is render'd less desirable to them, as they are thereby render'd less serviceable

serviceable to any good Purpose in their Generation. So that upon due Consideration, I apprehend our Prisons for Debt would appear of little Service to the Creditors of such Prisoners, or to the publick Good; and the greatest Mischief of lessening the Number of such Prisoners would be to those only who being encouraged thereto by the oppressive Gain of their Predecessors have (at great Sums of Money) purchased the Custody of them, by defeating them of the Opportunity of making the best of their Income, by oppressing the most Neccessitous, and easing the most Knavish of those who fall into their Custody, and lie there forgot of those very Creditors who keep them in. But the *Dutch* take effectual Measures to prevent Men from forgetting their Prisoners, by obliging those to subsist them who keep them there.

And it would be found of much greater Service to Creditors if there was a more effectual Way of applying what such Prisoners have towards an equal Payment of their respective Debts; and much more to the advantage of the Publick Service, if such great Numbers of Men who are now confined had their Liberty, by which they would necessarily to their own Support, be promoting Trade in some sort or other, whilst now they lie in Prisons perfectly useless to themselves and the Publick Good; and many of them have no other way of Subsisting, but by the Charity of others, which if they were discharged, might be applied to better Purposes; tho whilst they are so confin'd there may be but few fitter Objects thereof, and there cannot a greater and more necessary Charity be shewn then to take the most effectual Care by all fitting Means to lessen the Objects thereof, which after all that can be done, it's fear'd will still remain too numerous for the Supply afforded to their Relief.

[N^o XXX.]

The Occasional Courant.

TO all that hath been said on this Subject, it may be objected, that notwithstanding the direct and positive Injunctions of Christianity, notwithstanding the Inducements of Generosity and humane Pity, to Persons and Families under these Circumstances; notwithstanding the Interest of the Publick, in preserving so great a Number of Families, which fall under these Misfortunes, from being cut off from all Service in their Generation, or rendring their Children useful in the next; notwithstanding the present Interest of the Creditors, to make the most they can towards the payment of their Debts, out of the Effects of such Insolvents, and their future prospect of farther Restitution, by putting their Debtor in the most propable way of being able to Effect it; notwithstanding all this, yet it is requisite that all these Considerations, should be laid aside, in order that such Persons who do not pay their Debts should be subjected to the utmost Penalties, and greatest Hardships, as a Terror to others to be more careful, and not so to involve themselves, or run beyond their Circumstances, that (if they miss of Success) must bring a necessity on others to loose by them; for if Debtors find too easie a way of being discharged from their Creditors, it will encourage many to run the Adventure of other Mens Stocks, and take that on Credit, which if they meet with Disappointments, they cannot pay for; which in its Consequence will be a great Discouragement to giving any Credit, and consequently to Trade.

No doubt but these are good Purposes, to which the most effectual Regard should be had, and all the Means be used to prevent the ill Consequence of such Practices as may be, provided such Means do not draw on worse Consequences to Trade, than they are intended to prevent.

But may nothing but the utmost Terrors provide against these Inconveniencies, or might not such Measures many times prove

prove more to the Advantage of Vendors in general, which might give them some Inducements to look thro the Temptations of selling for very great Profit, towards the probability of their being paid ; might not this be rather of real Service to those who sell on Credit, than such extream Severities, which though at first view they may seem better to secure them, and thereby induce them the rather to give such Credit, yet may in their Issue prove as ineffectual, and more entirely deficient, than more moderate Methods ; which as they might be of some Service to Traders, by rendering them more cautious in trusting, so they might as effectually secure the Payment, or at the worst, much more effectually as to some part of it ?

And may not the Terrors of loosing all their Substance, and being put out of the way of their Livelihood, be as effectual with the Buyer, to the purpose of making him cautious, as all the additional Terrors can be ? For it hath been found in Practice, that reasonable Penalties in proportion to the Case, have been as effectual to prevent the Evils they are intended to restrain, as the most extream ; for it is Evident that no Penalties whatsoever, do so effectually provide against what they are intended to prevent as entirely to do it without Exception.

The Case in hand makes out this ; these Men who are so Zealous for the utmost Penalties, got the utmost that can be inflicted by humane Power, to prevent this very Evil ; and by the last Act concerning Bankrupts, procured a Clause that made a Fraud in them, Death, which probably is the only Case that ever any Law extended to that Penalty, as a Punishment of a Breach of private Trust ; yet this did not entirely provide against the Evil intended to be prevented, as is evident by these Mens opposing the renewal of that Act, as too merciful a Law in favour of unfortunate Traders.

For such a depravity is there in humane Nature, that no possible Penalties will prevent all from committing those Evils such Penalties are intended to restrain, therefore these things ought to be taken into Consideration, and it should be guarded against, that whilst by unnecessarily extending Measures, we are making the utmost Efforts against one sort of Evil, by over doing in those Measures, we do not draw on other Evils, which may be more Mischievous, not only to the Publick Good, but to those very Men they are intended to favour ; for some having their View entirely at one Evil, which at present

present affects them, run with such extream Eagerness to avoid it, that thereby they fall into greater Mischiefs, then they intended to Escape. And as I have shewn that these utmost Penalties cannot always be expected, effectually to answer the Purposes intended, no more than those temper'd with more Moderation; it will be likewise proper to consider, what Mischiefs may attend the Publick, and that very Interest of Trade and Credit, under pretence of Service to which some Men press, for the continuation of the utmost Severities, in order to the preventing Mens venturing beyond the extent of their own Fortunes, least by some unhappy Turnes of their Affairs, they should meet with such Disappointments, as may render them incapable of paying their whole Debts; but to these Objections as first stated, there lies another general Objection, which may be proper first to Consider, viz.

That if those who by Misfortunes sustained by the ill Turnes of Trade, which so frequently happen, are reduced to the utmost Miseries for their Lives, and put under a necessity of entailing them on their Families; by being for want of Liberty utterly incapacitated from taking any care of their Subsistence, or Education, or introducing them into any way of getting a Livelihood. If the unhappy Effects of missing Success in Trade must be carried to this Extream, who would venture to meddle with it, or put a Child to it, especially if we consider within these few Years, that by the ill Turnes which the *Virginia* Trade only took, for two or three Years together, it swept of at least half that drove it; many of whom had very considerable Beginnings, and that hath been always esteemed a most beneficial Trade to the Nation, and many noble Estates have been got thereby; since not only in this Trade, but in all others, we find sometimes such unhappy Accidents attend them, that no humane fore-sight could prevent, and which are frequently augmented by the very high Customs at present laid on all Merchandize: If these Accidents must be attended not only with the loss of all their Substance, but with their irretrievable loss of their Liberty likewise, and all the dismal train of Miseries that are the necessary Consequences thereof, surely Traders run the greatest hazard of being of all Men the most Miserable. And for any Father to introduce a Child into it, must be allowed to be either for want of rightly weighing the Good and Evil that may attend him, and the Proportions they bear with respect to the probabilities

bilities of each to other, or to a careless Neglect to the future Welfare of his Child: for suppose he hath a Chance to rise to a great Estate, it ought to be consider'd what must be stak'd against that Chance, and the odds they bear to each other, in Proportion to the value of the Stakes, and the Chance. Now if the Stake was only the Fortune they give their Child, it may be rational to stake a lesser Fortune on the probability of raising a greater, but when the Stake must likewise be the Liberty, the Family, the utter impossibility of retrieving any Subsistence for him, or his, or of being capable of improving, or even accepting to his own Use another Fortune if the Father could give it him; what Chance can be an equivalent to such a Stake as this?

And if there was a Register kept, of all the Traders that get great Estates, and all that are Unfortunate, I believe the odds in Number would be found, on the side of the Unfortunate; so that that would in no ways encourage so vast a disproportion in the Stakes. Therefore unless the Liberty of Traders Persons are retrieveable, from the hazard of their Adventures, I think nothing but the greatest Inconsideration can induce any kind Father to venture that which may be justly esteemed more than the Life, as well as the Fortune of his Child, against any Chance whatsoever; and these Considerations may prove a greater Discouragement to Trade in general, than lies in the Objection first stated.

But if we look a little closer into these Objections as before stated, there will be found many Cases, wherein their whole Force is defeated, and the Evils they draw on, are of much greater Consequence to Trade, than what they are propos'd to prevent; for either the keeping up these Severities in *Terrorem* as proposed, will have their intended Effects, or they will not; if they will not have such Effect, to what purpose should we bring on so many other Evils, by keeping them on Foot? but if they have such intended Effect, they must induce all Traders to keep within the Compass of their own Stocks, or thereabouts, and then there is no Occasion for any Creditor in Trade, and therefore there can be no occasion for any Terrors to support it, especially such tremendous ones as the utter Desolation, and irretrieveable Destruction of the Persons and Families of the Unfortunate, and the very great Additon, to the prejudice of those who happen to be Creditors to them.

And

And what Consequence this Effect of reducing all Traders, within the Compass of their own Stocks, would have on Trade would soon appear, if we were to look into the Books of those who have been the main Support of it; but if we only consider the Case of such, who from very small Beginnings raised the best Estates in Trade, is it not evident that they must have run Adventures vastly beyond their own Stocks in the doing it, which had they taken ill Turns, must have ranked them with those who now want Relief? And if ever these Terrors take their full Effect, it would soon be found what a miserable Cramp they would be to the Trade of this Nation, to the reducing many Thousands to the want of that daily Bread they now earn by the Extent of Trade, and much greater Numbers than are yet fallen under it, to the State of that Bankruptcy, the preventing of which is the Pretences whereon these Objections are Founded, but there may be good Reasons to believe that there are other Motives at the bottom with some.

For though it must be allowed that the supporting Credit is as essentially Necessary to the supporting the Body Politick of Trade, as Meat and Drink is to the support of the Natural Body; yet there may be a sort of Credit used therein, which is as injurious to the Health of Trade, as Surfeiting and Drunkenness is to the Health of the Natural Body. And the necessity of supporting the Credit of Trade, by such Exorbitant Terrors, is generally most urged by those who for their own Views, apply that Surfeiting, rather than feeding Credit to it. They first induce a Man to exceed his Intentions in buying, and when by his being persuaded by such, to over Stock his Trade, or extend his Adventure beyond the Opportunity of having returns in due time; and therefore can't comply punctually in his Payments, they soon (as it is call'd) get him under their Girdle, and then they are as sure of him, as a Fowler is of his Bird, when he hath tucked his Head under his Girdle; from whence that saying in Trade, is doubtless derived. Then he must take off such Goods, and at such Prices, as are proposed to him, and make such allowances for Forbearance, as will be satisfactory. And when by these Measures all his Substance is licked up, as the Ox licketh up the Grains of the Field, this sort of Creditors are generally most displeased that they can have no more than all, and by the cunning Management

ment of some, in this way of forcing Credit, probably there are as many brought under the necessity of wanting Relief, for the bare Liberty of their Persons, as by the more fatal Accidents which attend others in their Trade. And as these Transactions are a Proof that Principles have little weight with these Men, so the want of those Principles in their Negotiations, is evidence that they are the same Men that shew so little regard to Principles in the Measures of their Compassion, or Inclination to Forgiveness; and certainly all the Motives which have been urged, and the good Purposes to which they tend, ought not to be set aside in favour of such Practicers in Trade as these, whose chief Aims in having these Severities continued, may possibly be to induce the rest of the Birds in their Girdle, to get out of their Debts before they Fail, by running much deeper in with others, who may probably be more Merciful; or else they endeavour to prevent such their Debtors from coming abroad, least they should give younger Men notice to be ware of the Snares they were caught in. And it is sometimes by this sort of Traders, assign'd as a Reason, for not complying with any Terms, viz. That they know the Tenderneſs of many of their Chaps, and the inducing them by their Severities to others, to take care to get out of their Books before they go off, may be of more Service to them than a Composition: Now these Mens Ways of Dealings, must of Necessity make their Chapmen tender, and if they can by such Severities induce them to get out of their Debts by running into other Mens, that they deem more Merciful, they not only devour the Whole Substance of such their Debtors, but through them, by Virtue of their having these Terrors (which they are so fond of) in their Custody, they defraud the more merciful and fair Trader.

And if these Terrors are still kept on Foot, the most likely Consequence will be, that so soon as Men begin to find themselves under any Fears of being reduced, and consider the Improbability of ever getting their Liberty; if things should come to the worst with them, they will find it their best way to transmit what they can into some Foreign Country, and follow it with their Persons.

And since we see Traytors, tho they have the Care of the Government therein, and large Sums of Money offer'd, to encourage all to stop them, yet they generally get off,

it will be no great Difficulty for him who hath only his Creditors to fear in the Stop, and they not apprised of his Intention to make such Escape. And our Neighbour Nations would soon find their Accounts by entertaining such Refugees, and our Nation would find the Loss in general, and Creditors in particular; and should this be brought frequently into Practice (which must be the inevitable Consequence of farther Delays in the Consideration of this Case) what Distrusts and Jealousies would this beget amongst Traders, and how injurious it would prove to Commerce, may hardly be perceived, till it might in a great Measure be too late to remedy it.

But against the Methods hereby proposed, it is likewise suggested, That whilst Laws tending towards these Purposes were in force, the fraudulent Uses that were made of them by some, in getting those Friends to appear as Creditors, which really were not so, and thereby making up the Numbers required, was thought good Reason to repeal some of those Laws, and let others of them drop when expired without renewal.

These Suggestions may probably be the cause of such Effects, but whether there is much in them more than meer Suggestion, hath not been sufficiently made out; so that it still remains a Doubt whether these Suggestions were not made by some, (to the discouragement of the Renewal of those Laws) whose real Reasons against them, would not have been so proper to be alledged; for had there been undoubted Grounds, from repeated Facts for the Suggestion of such frequent Frauds, I apprehend the Courts of Law or Equity, furnishes Means sufficient to detect and defeat them; or at least it would have more fully answered such Suggestions, to have got a Clause which might have prevented such Frauds for the future, than to have made use of them to defeat all the good Purposes of those Acts. But since these Suggestions have been applyed to that intent, it gives a strong Presumption, that in the Main, they were but meer Suggestions; which might be apprehended more to the purposes of those, who from particular Views of their own, were rather for defeating the whole Measures settled by those Acts, than redressing any Inconveniencies that did arise in the Practice thereof, and wherein the laying open such their Views, might have tended to defeat their own purposes; therefore they might more probably expect to carry their Point,

Point, by making general Suggestions, than by giving their true Reasons why they were against those Laws, for when none appear on the other side, Suggestions may often have the Effect of a Proof, and in the nature of this Case there can none be expected to appear on the other side, to put those who made these Suggestions, upon particular Proofs to support them; for as to those who have got their Liberty, tho' their very Case may be quoted, to support these Suggestions, yet as long as nothing is attempted to defeat them, of that Liberty they have got, they have no Reason to appear; and the Application necessary to their Subsistence, gives them not leisure officiously to Solicit where they are not concern'd. And this supplies another Reason, that in the Main these are but Suggestions, for were they real Facts, and so notorious as supposed, it would be a better Reason for giving the Creditors a Resumption of their Power, over such Debtors as have used such Methods, than to defeat those who come after them, and had not attempted the Use of such practices. And yet these Suggestions were never applyed to this purpose; one Reason of which, may be the apprehension of those who made them, might then have, of being put to a fair Proof, and the Parties against whom they were made, being heard in their own Defence, whereby probably when the true State of the Facts Suggested should appear, the Force of them might fall to nothing; but as those who make these Suggestions have never endeavoured to apply them to the reassuming their Power over such Debtors, by the Instance of whose Case they have endeavoured to Support them; they have thereby secured themselves against such Persons Confronting those Suggestions, whereby those Facts alledged, may have passed as granted, which might in Truth be but ill grounded Suspensions, which instead of being made use of against those who have been supposed to have committed such Frauds, and the preventing the like for the Future in others, they have been applyed to Mis-represent and set aside all the good purposes of such Acts, so that the true Reason of such Laws falling, may probably turn on the Incapacity of their Soliciting, who chiefly want them, and by their being deterred by the Scituation of their Circumstances, from Confronting any Suggestions that are made against them. And therefore tho' these Suggestions may be very good Reasons to take all proper Measures to Guard against such Practices, yet there

there is no Reason that they should be so far allowed, as wholly to prevent those Methods, the want of which many times brings much greater Evils to the Interest of such Creditors, who have nothing in View but to make the most they can, in an equal Proportion with the rest, then is included in these Suggestions; at least a much more Visible and Material prejudice, than could arise from them, if the proper Means were taken, to prevent any such fraudulent Practice for the future, which in all probability would be effectually done, by making such Practice a defeat to all the benefits the Debtor was to reap from such a Law.

The necessary debate on this Subject, has swell'd this Treatise to a greater Length than I intended; but apprehending that it was impossible to have any Thoughts towards the good of Trade, without taking this Case into full Consideration, I was willing to State it in the plainest Light I was capable of, and by weighing every Objection I have heard, or did occur to my Thoughts therein, to render it the more Compleat to the Purposes intended. But if any shall think fit to shew to the Publick any farther Objections, that are not included in what I have here laid down, and I shall have the Fortune to meet with them, I will either acknowledge that I am convinced thereby, and retract what I have here said, or give my Reasons why I continue still of the same Sentiments in these Affairs.

West-Country,

23d. April 1717.

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